|    | 28  |                |   |  |
|----|---|----------------|---|--|
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| 8  | City of Stockton  |                |   |  |
| 9  | UNITED STATES BA  | NKRUPTCY       | COURT   |  |
| 10 | EASTERN DISTRIC   | T OF CALIF     | ORNIA   |  |
| 11 | SACRAMENT   | TO DIVISION    | 1   |  |
| 12 | In re:  | Case No        | . 2012-32118  |  |
| 13 | CITY OF STOCKTON, CALIFORNIA,                                     | D.C. No.       | OHS-15  |  |
| 14 | Debtor.   | Chapter        | 9   |  |
| 15 |   |                | STOCKTON'S RESPONSE   |  |
| 16 |   | FREE IN        | NKLIN HIGH YIELD TAX-<br>COME FUND AND                        |  |
| 17 |   | YIELD M        | IN CALIFORNIA HIGH<br>IUNICIPAL FUND'S<br>FIARY OBJECTIONS TO |  |
| 18 |   | DIRECT         | TESTIMONY<br>ATION OF TOM NELSON IN                           |  |
| 19 |   | <b>SUPPOR</b>  | T OF CONFIRMATION OF<br>MENDED PLAN FOR THE                   |  |
| 20 |   | <b>ADJUST</b>  | MENT OF DEBTS OF CITY CKTON CALIFORNIA                        |  |
| 21 |   |                | BER 15, 2013)   |  |
| 22 | WELLS FARGO BANK, et al.  | Adv. No        | . 2013-02315  |  |
| 23 | Plaintiffs, v.  | Date:          | May 12, 2014  |  |
| 24 | CITY OF STOCKTON, CALIFORNIA,                                     | Time:<br>Dept: | 9:30 a.m.<br>Courtroom 35                                     |  |
| 25 | Defendant.  | Judge:         | Hon. Christopher M. Klein                                     |  |
| 26 |   |                |   |  |
| 27 |   |                |   |  |
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Pursuant to paragraph 44 of the Order Governing The Disclosure And Use Of Discovery Information And Scheduling Dates, Etc. [Dkt. Nos. 1224 (Case), 16 (Proceeding)], as amended by the Order Modifying Order Governing The Disclosure And Use Of Discovery Information And Scheduling Dates, Etc. [Dkt. Nos. 1242 (Case), 18 (Proceeding)] (collectively, the "Orders"), the City of Stockton, California (the "City"), the debtor and defendant in the above-captioned case and adversary proceeding, hereby submits the following responses to Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund's (collectively, "Franklin's") Evidentiary Objections to Direct Testimony Declaration of Tom Nelson In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton California (November 15, 2013) [Dkt. Nos. 1420 (Case), 109 (Proceeding)].

The City disagrees with all of Franklin's objections to Mr. Nelson's declaration and submits that Franklin will have the opportunity to cross-examine Mr. Nelson to address any alleged deficiencies in his declaration. However, to the extent the Court determines that any of Mr. Nelson's statements in his declaration require clarification or additional foundational support, the City is prepared to provide live testimony at trial by Mr. Nelson to clarify or lay any foundation the Court deems necessary.

The City's responses to Franklin's specific objections follow:

| 18<br>19 | PARAGRAPH OBJECTED<br>TO                                   | GROUNDS FOR<br>OBJECTION  | RESPONSE TO OBJECTION                                       |
|----------|--|---|---|
| 20       | 5. I have reviewed the Chin Report submitted by Franklin   | Franklin objects to the underlined portions of this                 | The underlined portions of this paragraph are valid lay     |
| 21       | High Yield Tax-Free Income<br>Fund and Franklin California | paragraph because they consist of improper opinion                  | opinion testimony under FED. R. EVID. 701 because they      |
| 22       | High Yield Municipal Fund (together, "Franklin"). Mr.      | testimony that is not rationally based on Mr. Nelson's              | are rationally based on Mr.<br>Nelson's perception, helpful |
| 23       | Chin did not contact me as part of the preparation of the  | perception and is not helpful to clearly understand Mr.             | to clearly understanding his testimony and helpful to       |
| 24       | Chin Report, nor to my knowledge did he contact            | Nelson's testimony or to determine a fact in issue.                 | determining at least one fact in issue. The statements are  |
| 25       | anyone else at either of the Courses or at Kemper. Mr.     | FED. R. EVID. 701; see also<br>Britz Fertilizers, Inc. v. Bayer     | also based on Mr. Nelson's knowledge and experience as      |
| 26       | Chin's report is seriously flawed, and either omits or     | <i>Corp.</i> , 2009 U.S. Dist. LEXIS 57947, at *8-9 (E.D. Cal. June | General Manager of Swenson<br>Park and Van Buskirk golf     |
| 27       | glosses over critical considerations relevant to the       | 17, 2009) (fact witness not permitted to offer opinions to          | courses (together, the "Courses") as well as a golf         |
| 28       | profitability and value of the                             | rebut expert's methodology).  | professional for the past 30                                |

| 1  | DADACDADII OD IECTED  | CDOLINDS FOR   | DECDONCE TO   |
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| 2  | PARAGRAPH OBJECTED<br>TO                                    | GROUNDS FOR<br>OBJECTION                                   | RESPONSE TO OBJECTION   |
| 3  | Courses. Specifically, Mr. Chin's "valuation" ignores (1)   | Furthermore, the underlined portions of this paragraph are | years, who for the past three years has been employed by            |
| 4  | the market conditions that place extreme price pressures    | inadmissible because they assume facts not in evidence     | KemperSports, Inc. managing the Courses, as more fully              |
| 5  | on the Courses, (2) the continued projected shortfalls      | and lack foundation. FED. R. EVID. 602. Franklin also      | described in ¶¶ 1-2 of his declaration. <i>Cf. Int'l Ass'n of</i>   |
| 6  | for the Courses, and (3) the millions of dollars in capital | objects to the statements in this paragraph because Mr.    | Firefighters, Local 1186 v.<br>City of Vallejo, 48 B.R. 208,        |
| 7  | improvements and deferred                                   | Nelson's description of the                                | 292-93 (B.A.P. 9th Cir. 2009)                                       |
|    | maintenance that would have to be undertaken in order for   | Chin Report is not the best evidence of the contents of    | (upholding the bankruptcy court's admission of the                  |
| 8  | the Courses to turn a profit.                               | that document. FED. R. EVID. 1002.                         | testimony of the City of<br>Vallejo's Assistant Finance             |
| 9  |   |  | Director regarding Vallejo's financial conditions and               |
| 10 |   |  | constraints even though the testimony "arguably contained           |
| 11 |   |  | legal conclusions" because the testimony pertained to the           |
| 12 |   |  | "complex[]" area of municipal accounting and promoted               |
| 13 |   |  | "judicial efficiency") (citing FRE 701).                            |
| 14 |   |  | Furthermore, expert testimony                                       |
| 15 |   |  | may be rebutted by the testimony of lay witnesses.                  |
| 16 |   |  | <i>United States v. Shackelford</i> , 494 F.2d 67, 68, 75 (9th Cir. |
| 17 |   |  | 1974) (holding that the   |
| 18 |   |  | government could rely entirely on lay witnesses with                |
| 19 |   |  | percipient knowledge to rebut                                       |
| 20 |   |  | the defendant's expert); United States v. Bennett, 908              |
| 21 |   |  | F.2d 189, 195 (7th Cir. 1990)<br>(government was not required       |
| 22 |   |  | to rebut expert testimony with                                      |
| 23 |   |  | its own expert because "it may accomplish the same result by        |
| 24 |   |  | presenting lay witnesses and other evidence and by                  |
| 25 |   |  | undermining the defense   |
| 26 |   |  | expert's credibility through cross-examination."); <i>United</i>    |
|    |   |  | States v. Mota, 598 F.2d 995,                                       |
| 27 |   |  | 999 (5th Cir. 1979) (jury may find expert testimony                 |
| 28 |   |  | "adequately rebutted by the   |

| 1  | PARAGRAPH OBJECTED  | GROUNDS FOR   | RESPONSE TO  |
|----|---|---|--|
| 2  | TO TO   | OBJECTION   | OBJECTION  |
| 3  |   |   | observations of mere laymen"); Carpenter v. United                   |
| 4  |   |   | States, 264 F.2d 565 (4th Cir.                                       |
| 5  |   |   | 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961). |
| 6  |   |   | The underlined portions of   |
| 7  |   |   | this paragraph do not assume facts not in evidence and do            |
|    |   |   | not lack foundation under FED R. EVID. 602 because                   |
| 8  |   |   | they are based on Mr. Nelson's knowledge and                         |
| 9  |   |   | experience as described above. To the extent                         |
| 10 |   |   | necessary, the City will make an offer of proof at trial.            |
| 11 |   |   | The statements in this   |
| 12 |   |   | paragraph do not violate FED.<br>R. EVID. 1002 because they          |
| 13 |   |   | are not secondary evidence<br>being offered to prove the             |
| 14 |   |   | content of a writing. See<br>United States v. Mayans, 17             |
| 15 |   |   | F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial           |
| 16 |   |   | court erred in sustaining best evidence objections to                |
| 17 |   |   | questions regarding witnesses' understanding of the terms of         |
| 18 |   |   | a written plea agreement).<br>Even if they were, Franklin is         |
| 19 |   |   | in possession of a copy of the                                       |
| 20 |   |   | Chin Report, which it filed in the Proceeding.                       |
| 21 | 6. The Chin Report  | Franklin objects to the                                       | The underlined portion of this                                       |
| 22 | suggests that revenues at the Courses could be increased by | underlined portion of this paragraph because it consists      | paragraph is valid lay opinion testimony under FED. R.               |
| 23 | simply increasing course fees.<br>Chin Report, at 36-38.    | of improper opinion testimony that is not rationally based on | EVID. 701 because it is rationally based on                          |
| 24 | However, this conclusion ignores the realities of the       | Mr. Nelson's perception and is not helpful to clearly         | Mr. Nelson's perception, helpful to clearly                          |
| 25 | market in which the Courses compete.                        | understand Mr. Nelson's testimony or to determine a           | understanding his testimony and helpful to determining at            |
| 26 |   | fact in issue. FED. R. EVID. 701; see also Britz              | least one fact in issue. The underlined portion is also              |
| 27 |   | Fertilizers, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact       | based on Mr. Nelson's knowledge and experience as                    |
| 28 |   | witness not permitted to offer opinions to rebut expert's     | General Manager of the<br>Courses as well as a golf                  |

| 1  | PARAGRAPH OBJECTED | GROUNDS FOR  | RESPONSE TO   |
|----|--------------------|--|---|
| 2  | TO                 | OBJECTION  | OBJECTION   |
| 3  |                    | methodology). Franklin also objects to the statements in | professional for the past 30 years, who for the past three                            |
| 4  |                    | this paragraph because Mr.                               | years has been employed by  |
| 4  |                    | Nelson's description of the Chin Report is not the best  | KemperSports, Inc. managing the Courses. <i>Cf. Int'l Ass'n of</i>                    |
| 5  |                    | evidence of the contents of that document. FED. R.       | Firefighters, Local 1186 v.   |
| 6  |                    | EVID. 1002.  | City of Vallejo, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy |
| 7  |                    |  | court's admission of the  |
| 8  |                    |  | testimony of the City of Vallejo's Assistant Finance                                  |
| 9  |                    |  | Director regarding Vallejo's  |
| 9  |                    |  | financial conditions and constraints even though the                                  |
| 10 |                    |  | testimony "arguably contained legal conclusions" because the                          |
| 11 |                    |  | testimony pertained to the  |
| 12 |                    |  | "complex[]" area of municipal accounting and promoted                                 |
|    |                    |  | "judicial efficiency") (citing  |
| 13 |                    |  | FRE 701).   |
| 14 |                    |  | Furthermore, expert testimony may be rebutted by the                                  |
| 15 |                    |  | testimony of lay witnesses.   |
| 16 |                    |  | United States v. Shackelford,   |
|    |                    |  | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the                                 |
| 17 |                    |  | government could rely   |
| 18 |                    |  | entirely on lay witnesses with percipient knowledge to rebut                          |
| 19 |                    |  | the defendant's expert);  |
| 20 |                    |  | United States v. Bennett, 908   |
|    |                    |  | F.2d 189, 195 (7th Cir. 1990)<br>(government was not required                         |
| 21 |                    |  | to rebut expert testimony with  |
| 22 |                    |  | its own expert because "it may  |
| 23 |                    |  | accomplish the same result by presenting lay witnesses and                            |
|    |                    |  | other evidence and by   |
| 24 |                    |  | undermining the defense   |
| 25 |                    |  | expert's credibility through cross-examination."); <i>United</i>                      |
| 26 |                    |  | States v. Mota, 598 F.2d 995,   |
|    |                    |  | 999 (5th Cir. 1979) (jury may   |
| 27 |                    |  | find expert testimony "adequately rebutted by the                                     |
| 28 |                    | <u> </u>   | adoquatery redutted by the  |

| 1 2      | PARAGRAPH OBJECTED<br>TO   | GROUNDS FOR<br>OBJECTION  | RESPONSE TO OBJECTION  |
|----------|--|---|--|
| 3   4    |  |   | observations of mere<br>laymen"); Carpenter v. United<br>States, 264 F.2d 565 (4th Cir.<br>1959); Dusky v. United States,<br>295 F.2d 743 (8th Cir. 1961). |
| 5        |  |   | The statements in this   |
| 6<br>7   |  |   | paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence  |
| 8        |  |   | being offered to prove the   |
| 9        |  |   | content of a writing. See United States v. Mayans, 17 F.3d 1174, 1184-85 (9th Cir.   |
| 10       |  |   | 1994) (holding that the trial court erred in sustaining best evidence objections to  |
| 11       |  |   | questions regarding witnesses' understanding of the terms of   |
| 12       |  |   | a written plea agreement).<br>Even if they were, Franklin is   |
| 13       |  |   | in possession of a copy of the   |
| 14       |  |   | Chin Report, which it filed in the Proceeding.   |
| 15       | 7. Shortly after Kemper  | Franklin objects to the   | The italicized portions of this  |
| 16       | took over management of the<br>Courses, there were several<br>important changes to the golf    | italicized portions of this paragraph because they assume facts not in evidence | paragraph do not assume facts<br>not in evidence and do not<br>lack foundation under FED R.  |
| 17<br>18 | industry in the Stockton area.<br>Elkhorn Golf Club in north                                   | and lack foundation. FED. R. EVID. 602. Franklin also objects to the italicized | EVID. 602 because they are based on Mr. Nelson's   |
| 19       | Stockton, which had previously declared  | portion of this paragraph   | knowledge and experience as<br>General Manager of the  |
| 20       | bankruptcy and ceased operations, was purchased by   | because it consists of improper opinion testimony                               | Courses as well as a golf professional for the past 30   |
| 21       | former members and Sierra Golf Management and re-  | that is not rationally based on Mr. Nelson's perception and                     | years, who for the past three years has been employed by   |
| 22       | opened as a public, heavily-discounted facility. Similarly,                                    | is not helpful to clearly<br>understand Mr. Nelson's                            | KemperSports, Inc. managing the Courses, as more fully   |
| 23       | Micke Grove Golf Links in<br>Lodi changed management to  | testimony or to determine a fact in issue. FED. R. EVID.                        | described in ¶¶ 1-2 of his declaration. To the extent  |
|          | Fore Golf Partners, a very aggressive discount firm.   | 701; see also Britz Fertilizers, 2009 U.S. Dist. LEXIS 57947,                   | necessary, the City will make an offer of proof at trial.  |
| 24<br>25 | Lockeford Springs Golf<br>Course in Lodi also began<br>heavily discounting its fees            | at *8-9.  | The italicized portion of this paragraph is valid lay opinion  |
| 26       | due to local market pressure.  |   | testimony under FED. R. EVID. 701 because it is  |
| 27       | During this period, The<br>Reserve at Spanos in Stockton                                       |   | rationally based on Mr. Nelson's perception,   |
| 28       | began discounting its fees for<br>the first time due to market<br>changes. <i>Due to these</i> |   | helpful to clearly<br>understanding his testimony  |

| 1  | PARAGRAPH OBJECTED<br>TO                                   | GROUNDS FOR<br>OBJECTION | RESPONSE TO OBJECTION   |
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| 2  | changes, the ability to charge                             | Obtenion                 | and helpful to determining at   |
| 3  | full-price, or "rack," rate has virtually been eliminated, |                          | least one fact in issue. The italicized portion is also based                           |
| 4  | requiring constant discounts and deals in order to attract |                          | on Mr. Nelson's knowledge and experience as described                                   |
| 5  | play and reasonably compete                                |                          | above. To the extent  |
| 6  | with the Stockton area golf market.                        |                          | necessary, the City will make an offer of proof at trial. <i>Cf.</i>                    |
| 7  |  |                          | Int'l Ass'n of Firefighters,<br>Local 1186 v. City of Vallejo,                          |
| 8  |  |                          | 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the                               |
| 9  |  |                          | bankruptcy court's admission<br>of the testimony of the City of                         |
| 10 |  |                          | Vallejo's Assistant Finance<br>Director regarding Vallejo's<br>financial conditions and |
| 11 |  |                          | constraints even though the   |
| 12 |  |                          | testimony "arguably contained legal conclusions" because the                            |
| 13 |  |                          | testimony pertained to the "complex[]" area of municipal                                |
| 14 |  |                          | accounting and promoted "judicial efficiency") (citing                                  |
| 15 |  |                          | FRE 701).   |
| 16 |  |                          | Furthermore, expert testimony may be rebutted by the                                    |
| 17 |  |                          | testimony of lay witnesses. <i>United States v. Shackelford</i> ,                       |
| 18 |  |                          | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the                                   |
| 19 |  |                          | government could rely   |
|    |  |                          | entirely on lay witnesses with percipient knowledge to rebut                            |
| 20 |  |                          | the defendant's expert);  |
| 21 |  |                          | United States v. Bennett, 908   |
| 22 |  |                          | F.2d 189, 195 (7th Cir. 1990)<br>(government was not required                           |
| 23 |  |                          | to rebut expert testimony with  |
| 23 |  |                          | its own expert because "it may  |
| 24 |  |                          | accomplish the same result by   |
| 25 |  |                          | presenting lay witnesses and  |
|    |  |                          | other evidence and by undermining the defense   |
| 26 |  |                          | expert's credibility through  |
| 27 |  |                          | cross-examination."); <i>United States v. Mota</i> , 598 F.2d 995,                      |
| 28 |  |                          | 999 (5th Cir. 1979) (jury may   |

| 1 2       | PARAGRAPH OBJECTED<br>TO  | GROUNDS FOR<br>OBJECTION   | RESPONSE TO OBJECTION  |
|-----------|---|--|--|
| 3         |   |  | find expert testimony "adequately rebutted by the  |
| 4   <br>5 |   |  | observations of mere laymen"); <i>Carpenter v. United States</i> , 264 F.2d 565 (4th Cir.    |
|           |   |  | 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961).                         |
|           | 8. As a result of this increased competitiveness, it  | Franklin objects to the italicized portions of this  | The italicized portions of this paragraph are not speculative                                |
|           | would be difficult, if not impossible, for either of the                                    | paragraph because they are speculative and lack  | and do not lack foundation<br>under FED. R. EVID. 602  |
|           | Courses to increase revenues by merely raising their fees,                                  | foundation. FED. R. EVID. 602. Franklin also objects to                                    | because they are based on Mr. Nelson's knowledge and   |
|           | because doing so would cause golfers to take their business elsewhere. Even with            | the italicized portion of this paragraph because it consists of improper opinion testimony | experience as General Manager of the Courses as well as a golf professional for              |
|           | Kemper's aggressive marketing, players search the   | that is not rationally based on Mr. Nelson's perception and                                | the past 30 years, who for the past three years has been                                     |
|           | local area for the best deal.<br>By way of example, after I recently sent an e-mail blast   | is not helpful to clearly<br>understand Mr. Nelson's<br>testimony or to determine a        | employed by KemperSports,<br>Inc. managing the Courses, as<br>more fully described in ¶¶ 1-2 |
|           | to Kemper's mailing list offering a discounted rate, one                                    | fact in issue. FED. R. EVID. 701; see also Britz Fertilizers,                              | of his declaration. To the extent necessary, the City will                                   |
|           | of my local competitors send an e-mail blast just hours                                     | 2009 U.S. Dist. LEXIS 57947, at *8-9.  | make an offer of proof at trial.   |
|           | later, offering prices a dollar or two lower in order to                                    |  | The italicized portion of this paragraph is valid lay opinion testimony under FED. R.        |
|           | combat my offer. It is not<br>unusual for players to bring in<br>offers from my competitors |  | EVID. 701 because it is rationally based on  |
|           | and state they will play at the Courses only if we match                                    |  | Mr. Nelson's perception,<br>helpful to clearly<br>understanding his testimony                |
|           | their offer.  |  | and helpful to determining at least one fact in issue. The                                   |
|           |   |  | italicized portion is also based<br>on Mr. Nelson's knowledge                                |
|           |   |  | and experience as described above. To the extent   |
|           |   |  | necessary, the City will make an offer of proof at trial. <i>Cf.</i>                         |
|           |   |  | Int'l Ass'n of Firefighters,   |
|           |   |  | Local 1186 v. City of Vallejo,<br>48 B.R. 208, 292-93 (B.A.P.                                |
|           |   |  | 9th Cir. 2009) (upholding the bankruptcy court's admission                                   |
|           |   |  | of the testimony of the City of Vallejo's Assistant Finance                                  |
|           |   |  | Director regarding Vallejo's financial conditions and  |
|           |   |  | constraints even though the  |

| .                                      |   |   |  |
|--|---|---|--|
| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH OBJECTED<br>TO  | GROUNDS FOR<br>OBJECTION  | RESPONSE TO<br>OBJECTION   |
| 3 4 5                                  |   |   | testimony "arguably contained legal conclusions" because the testimony pertained to the "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing |
| 6                                      |   |   | FRE 701).  |
| 7                                      |   |   | Furthermore, expert testimony may be rebutted by the   |
| 8                                      |   |   | testimony of lay witnesses. <i>United States v. Shackelford</i> ,  |
| 9                                      |   |   | 494 F.2d 67, 68, 75 (9th Cir.  |
| 10                                     |   |   | 1974) (holding that the government could rely  |
| 11                                     |   |   | entirely on lay witnesses with percipient knowledge to rebut   |
| 12                                     |   |   | the defendant's expert); <i>United States v. Bennett</i> , 908   |
| 13                                     |   |   | F.2d 189, 195 (7th Cir. 1990)  |
| 14                                     |   |   | (government was not required to rebut expert testimony with  |
| 15                                     |   |   | its own expert because "it may accomplish the same result by   |
| 16                                     |   |   | presenting lay witnesses and other evidence and by   |
| 17                                     |   |   | undermining the defense  |
| 18                                     |   |   | expert's credibility through cross-examination."); <i>United</i>   |
| 19                                     |   |   | States v. Mota, 598 F.2d 995, 999 (5th Cir. 1979) (jury may  |
| 20                                     |   |   | find expert testimony "adequately rebutted by the  |
| 21                                     |   |   | observations of mere   |
| 22                                     |   |   | laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir.   |
| 23                                     |   |   | 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961).   |
| 24                                     | 9. The Chin Report briefly  | Franklin objects to the   | The statements in this   |
| 25                                     | acknowledges that the Courses have consistently lost                                      | statements in this paragraph<br>because Mr. Nelson's                                      | paragraph do not violate FED.<br>R. EVID. 1002 because they  |
| 26                                     | money for nearly a decade,<br>but appears to give this fact<br>little to no weight in his | description of the Chin Report is not the best evidence of the contents of that document. | are not secondary evidence<br>being offered to prove the<br>content of a writing. See  |
| 27                                     | valuation of the Courses. This is a critical omission, as any                             | FED. R. EVID. 1002.<br>Franklin also objects to the                                       | United States v. Mayans, 17<br>F.3d 1174, 1184-85 (9th Cir.  |
| 28                                     | legitimate valuation must   | underlined portions of this   | 1994) (holding that the trial  |

| 1      | PARAGRAPH OBJECTED               | GROUNDS FOR  | RESPONSE TO   |
|--------|----------------------------------|--|---|
| 2      | TO                               | OBJECTION  | OBJECTION   |
| 2      | consider the financial realities | paragraph because they   | court erred in sustaining best  |
| 3    4 | at the Courses.                  | consist of improper opinion<br>testimony that is not rationally<br>based on Mr. Nelson's | evidence objections to<br>questions regarding witnesses'<br>understanding of the terms of |
| 5      |                                  | perception and is not helpful to clearly understand Mr.                                  | a written plea agreement). Even if they were, Franklin is                                 |
| 6      |                                  | Nelson's testimony or to determine a fact in issue.                                      | in possession of a copy of the<br>Chin Report, which it filed on                          |
| ٦      |                                  | FED. R. EVID. 701; see also  | the Court's docket.   |
| 7      |                                  | <i>Britz Fertilizers</i> , 2009 U.S. Dist. LEXIS 57947, at *8-9                          | The underlined portions of  |
| 8      |                                  | (fact witness not permitted to   | this paragraph are valid lay opinion testimony under FED.                                 |
| 9      |                                  | offer opinions to rebut expert's methodology).   | R. EVID. 701 because they are rationally based on   |
| 10     |                                  |  | Mr. Nelson's perception, helpful to clearly   |
| 11     |                                  |  | understanding his testimony   |
|        |                                  |  | and helpful to determining at least one fact in issue. The                                |
| 12     |                                  |  | underlined portions are also  |
| 13     |                                  |  | based on Mr. Nelson's knowledge and experience as   |
| 14     |                                  |  | General Manager of the  |
| 14     |                                  |  | Courses as well as a golf   |
| 15     |                                  |  | professional for the past 30 years, who for the past three                                |
| 16     |                                  |  | years has been employed by  |
|        |                                  |  | KemperSports, Inc. managing the Courses. To the extent                                    |
| 17     |                                  |  | necessary, the City will make   |
| 18     |                                  |  | an offer of proof at trial. <i>Cf.</i>  |
| 10     |                                  |  | Int'l Ass'n of Firefighters,<br>Local 1186 v. City of Vallejo,                            |
| 19     |                                  |  | 48 B.R. 208, 292-93 (B.A.P.   |
| 20     |                                  |  | 9th Cir. 2009) (upholding the bankruptcy court's admission                                |
| 21     |                                  |  | of the testimony of the City of   |
| 21     |                                  |  | Vallejo's Assistant Finance   |
| 22     |                                  |  | Director regarding Vallejo's financial conditions and                                     |
| 23     |                                  |  | constraints even though the testimony "arguably contained                                 |
| 24     |                                  |  | legal conclusions" because the  |
|        |                                  |  | testimony pertained to the  |
| 25     |                                  |  | "complex[]" area of municipal accounting and promoted                                     |
| 26     |                                  |  | "judicial efficiency") (citing FRE 701).  |
| 27     |                                  |  | Furthermore, expert testimony   |
| 28     |                                  |  | may be rebutted by the  |

| 1  | PARAGRAPH OBJECTED<br>TO                               | GROUNDS FOR<br>OBJECTION                                  | RESPONSE TO<br>OBJECTION  |
|----|--|---|---|
| 2  | 10   | OBJECTION   |   |
| 3  |  |   | testimony of lay witnesses. <i>United States v. Shackelford</i> , |
| 4  |  |   | 494 F.2d 67, 68, 75 (9th Cir.                                     |
|    |  |   | 1974) (holding that the government could rely                     |
| 5  |  |   | entirely on lay witnesses with                                    |
| 6  |  |   | percipient knowledge to rebut                                     |
| 7  |  |   | the defendant's expert); <i>United States v. Bennett</i> , 908    |
| 8  |  |   | F.2d 189, 195 (7th Cir. 1990)                                     |
|    |  |   | (government was not required to rebut expert testimony with       |
| 9  |  |   | its own expert because "it may                                    |
| 10 |  |   | accomplish the same result by                                     |
| 11 |  |   | presenting lay witnesses and other evidence and by                |
| 12 |  |   | undermining the defense   |
| 13 |  |   | expert's credibility through cross-examination."); <i>United</i>  |
|    |  |   | States v. Mota, 598 F.2d 995,                                     |
| 14 |  |   | 999 (5th Cir. 1979) (jury may                                     |
| 15 |  |   | find expert testimony "adequately rebutted by the                 |
| 16 |  |   | observations of mere  |
| 17 |  |   | laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir.      |
|    |  |   | 1959); Dusky v. United States,                                    |
| 18 |  |   | 295 F.2d 743 (8th Cir. 1961).                                     |
| 19 | 10. Over the past five years, each of the Courses has  | Franklin incorporates herein its concurrently-filed       | The City incorporates herein its concurrently filed               |
| 20 | operated at a loss and has                             | Evidentiary Objections To                                 | Response to Evidentiary   |
| 21 | required a subsidy from the City's General Fund. See   | Direct Testimony Declaration Of Val Toppenberg In Support | Objections To Direct Testimony Declaration Of Val                 |
|    | Declaration of Val<br>Toppenberg In Support Of         | Of Confirmation Of First Amended Plan For The             | Toppenberg In Support Öf<br>Confirmation Of First                 |
| 22 | City's Supplemental                                    | Adjustment Of Debts Of City                               | Amended Plan For The  |
| 23 | Memorandum Of Law In<br>Support Of Confirmation Of     | Of Stockton, California<br>(November 15, 2013).           | Adjustment Of Debts Of City<br>Of Stockton, California            |
| 24 | First Amended Plan For The                             | · · · · · · · · · · · · · · · · · · ·                     | (November 15, 2013).  |
| 25 | Adjustment Of Debts Of City<br>Of Stockton, California |   |   |
|    | (November 15, 2013)<br>("Toppenberg Decl."), ¶ 2,      |   |   |
| 26 | Exs. A, B, C. In addition,                             |   |   |
| 27 | while Swenson operated at a small profit during fiscal |   |   |
| 28 | years 2005-06, 2006-07, and                            |   |   |

| 1 2      | PARAGRAPH OBJECTED<br>TO  | GROUNDS FOR<br>OBJECTION   | RESPONSE TO OBJECTION  |
|----------|---|--|--|
| 3        | 2007-08, these profits were insufficient to cover losses at         |  |  |
| 4        | Van Buskirk. <i>Id.</i> As a result, the Courses together have lost |  |  |
| 5        | money every year for the past eight years. <i>Id</i> .              |  |  |
| 6        | 12. Attached hereto as <b>Exhibits C</b> and <b>D</b> are true and  | Franklin objects to the entirety   | This paragraph is valid lay  |
| 7        | correct copies of pro forma<br>summary profit and loss              | of this paragraph because it consists of improper opinion testimony that is not rationally | opinion testimony under FED. R. EVID. 701 because it is rationally based on      |
| 8        | projections prepared by<br>Kemper during FY 2011-2012               | based on Mr. Nelson's perception and is not helpful  | Mr. Nelson's perception, helpful to clearly                                      |
| 9        | for Swenson and Van Buskirk, respectively. <sup>2</sup> These       | to clearly understand Mr. Nelson's testimony or to   | understanding his testimony<br>and helpful to determining at                     |
| 10       | two documents contain projections of revenues and                   | determine a fact in issue.<br>FED. R. EVID. 701; see also                                  | least one fact in issue. The paragraph is also based on                          |
| 11       | expenses for FY 2012-2013,<br>FY 2014-2015, and FY 2015-            | Britz Fertilizers, 2009 U.S.<br>Dist. LEXIS 57947, at *8-9                                 | Mr. Nelson's knowledge and experience as General                                 |
| 12       | 16. The projections on page 35 of the Chin Report of net            | (fact witness not permitted to offer opinions to rebut                                     | Manager of the Courses as well as a golf professional for                        |
| 13       | income for FY 2014-2015 and FY 2015-16 rely upon the                | expert's methodology). Franklin further objects to the                                     | the past 30 years, who for the past three years has been                         |
| 14       | projections in Exhibits C and D for those years. But a              | statements in this paragraph because Mr. Nelson's  | employed by KemperSports,<br>Inc. managing the Courses.                          |
| 15       | comparison of the projections in Exhibits C and D for FY            | description of the Chin Report is not the best evidence of the                             | Cf. Int'l Ass'n of Firefighters,<br>Local 1186 v. City of Vallejo,               |
| 16       | 2012- 2013 against the actual FY 2012-2013 results                  | contents of that document, which speaks for itself. FED.                                   | 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the                        |
| 17       | reflected in Exhibits A and B reveals that the forecasts in         | R. EVIĎ. 1002.   | bankruptcy court's admission of the testimony of the City of                     |
| 18<br>19 | Exhibits C and D are obsolete.  a. Actual total revenues            |  | Vallejo's Assistant Finance<br>Director regarding Vallejo's                      |
| 20       | for Swenson in FY 2012-2013   |  | financial conditions and constraints even though the                             |
| 21       | (\$1,170,185) were only 86% of Exhibit                              |  | testimony "arguably contained legal conclusions" because the                     |
| 22       | C's projected total revenues for that                               |  | testimony pertained to the "complex[]" area of municipal accounting and promoted |
| 23       | year (\$1,354,343).   |  | "judicial efficiency") (citing FRE 701).   |
| 24       | b. There was an actual net loss for Swenson                         |  | Furthermore, expert testimony  |
| 25       | of \$169,679 in FY 2012-2013, in                                    |  | may be rebutted by the testimony of lay witnesses.                               |
| 26       | contrast to Exhibit<br>C's projected net                            |  | <i>United States v. Shackelford</i> , 494 F.2d 67, 68, 75 (9th Cir.              |
| 27       | income of \$17,275.  c. Actual total revenues                       |  | 1974) (holding that the  |
| 28       | c. Actual total revenues<br>for Van Buskirk in                      |  | government could rely<br>entirely on lay witnesses with                          |

| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH OBJECTED<br>TO                                       | GROUNDS FOR<br>OBJECTION                                      | RESPONSE TO OBJECTION  |
|--|--|---|--|
| 3                                      | FY 2012-2013<br>(\$538,337) were                               |   | percipient knowledge to rebut the defendant's expert);                                       |
| 4                                      | only 84% of Exhibit D's projected total                        |   | United States v. Bennett, 908<br>F.2d 189, 195 (7th Cir. 1990)                               |
| 5                                      | revenues for that year (\$638,229).                            |   | (government was not required   |
| 6                                      | d. There was an actual   |   | to rebut expert testimony with its own expert because "it may                                |
| 7                                      | net loss for Van<br>Buskirk of \$164,409                       |   | accomplish the same result by presenting lay witnesses and                                   |
| 8                                      | in FY 2012-2013,<br>5% greater than<br>Exhibit D's             |   | other evidence and by undermining the defense  |
| 9                                      | projected net loss of \$156,991.                               |   | expert's credibility through cross-examination."); <i>United</i>                             |
| 10                                     | fn2: All projections and actual                                |   | States v. Mota, 598 F.2d 995,  |
| 11                                     | results reflected in Exhibits A through D are before the       |   | 999 (5th Cir. 1979) (jury may find expert testimony  |
| 12                                     | allocation of any City expenses to the Courses.                |   | "adequately rebutted by the observations of mere   |
| 13                                     |  |   | laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir.                                 |
| 14                                     |  |   | 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961).                         |
| 15                                     |  |   | The statements in this   |
| 16                                     |  |   | paragraph do not violate FED.<br>R. EVID. 1002 because they                                  |
| 17                                     |  |   | are not secondary evidence<br>being offered to prove the<br>content of a writing. See        |
| 18                                     |  |   | <i>United States v. Mayans</i> , 17 F.3d 1174, 1184-85 (9th Cir.                             |
| 20                                     |  |   | 1994) (holding that the trial court erred in sustaining best                                 |
| 21                                     |  |   | evidence objections to questions regarding witnesses'  |
| 22                                     |  |   | understanding of the terms of<br>a written plea agreement).                                  |
| 23                                     |  |   | Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in |
| 24                                     |  |   | the Proceeding.  |
| 25                                     | 13. Based on the historical performance of and current         | Franklin objects to the entirety of this paragraph because it | This paragraph is valid lay opinion testimony under FED.                                     |
| 26                                     | projections for the Courses, it is extremely unlikely that the | consists of improper opinion testimony that is not rationally | R. EVID. 701 because it is rationally based on   |
| 27                                     | Courses could be made profitable without major                 | based on Mr. Nelson's perception and is not helpful           | Mr. Nelson's perception,<br>helpful to clearly   |
| 28                                     | capital investments. By  | to clearly understand Mr.                                     | understanding his testimony  |

| 1     |  |   |   |
|-------|--|---|---|
| 1   2 | PARAGRAPH OBJECTED<br>TO                                     | GROUNDS FOR<br>OBJECTION                                | RESPONSE TO OBJECTION   |
| 3     | largely ignoring this fact, the<br>Chin Report significantly | Nelson's testimony or to determine a fact in issue.     | and helpful to determining at least one fact in issue. The          |
|       | overestimates the value of the                               | FED. R. EVID. 701; see also                             | paragraph is also based on  |
| 4     | Courses. Further, the Chin<br>Report uses projected revenue  | Britz Fertilizers, 2009 U.S. Dist. LEXIS 57947, at *8-9 | Mr. Nelson's knowledge and experience as General                    |
| 5     | figures from obsolete projections created before the         | (fact witness not permitted to offer opinions to rebut  | Manager of the Courses as well as a golf professional for           |
| 6     | market underwent the shift outlined in paragraph 7 above.    | expert's methodology). Furthermore, the statements in   | the past 30 years, who for the past three years has been            |
| 7     | As demonstrated in paragraph 12 above, these are outdated    | this paragraph are inadmissible because they            | employed by KemperSports,<br>Inc. managing the Courses.             |
| 8     | projections based on obsolete                                | assume facts not in evidence                            | Cf. Int'l Ass'n of Firefighters,                                    |
| 9     | assumptions, and further undermine the conclusions of        | and lack foundation. FED. R. EVID. 602. Franklin also   | Local 1186 v. City of Vallejo,<br>48 B.R. 208, 292-93 (B.A.P.       |
| 10    | the Chin Report.   | objects to the statements in this paragraph because Mr. | 9th Cir. 2009) (upholding the bankruptcy court's admission          |
| 11    |  | Nelson's description of the Chin Report is not the best | of the testimony of the City of Vallejo's Assistant Finance         |
| 12    |  | evidence of the contents of that document. FED. R.      | Director regarding Vallejo's financial conditions and               |
| 13    |  | EVID. 1002.   | constraints even though the testimony "arguably contained           |
| 14    |  |   | legal conclusions" because the testimony pertained to the           |
|       |  |   | "complex[]" area of municipal                                       |
| 15    |  |   | accounting and promoted "judicial efficiency") (citing              |
| 16    |  |   | FRE 701).   |
| 17    |  |   | Furthermore, expert testimony may be rebutted by the                |
| 18    |  |   | testimony of lay witnesses. <i>United States v. Shackelford</i> ,   |
| 19    |  |   | 494 F.2d 67, 68, 75 (9th Cir.                                       |
| 20    |  |   | 1974) (holding that the government could rely                       |
| 21    |  |   | entirely on lay witnesses with                                      |
| 22    |  |   | percipient knowledge to rebut the defendant's expert);              |
| 23    |  |   | <i>United States v. Bennett</i> , 908 F.2d 189, 195 (7th Cir. 1990) |
| 24    |  |   | (government was not required  |
| 25    |  |   | to rebut expert testimony with its own expert because "it may       |
|       |  |   | accomplish the same result by                                       |
| 26    |  |   | presenting lay witnesses and other evidence and by                  |
| 27    |  |   | undermining the defense   |
| 28    |  |   | expert's credibility through  |

| 1  | PARAGRAPH OBJECTED  | GROUNDS FOR   | RESPONSE TO  |
|----|---|---|--|
| 2  | TO  | OBJECTION   | OBJECTION  |
| 3  |   |   | cross-examination."); <i>United States v. Mota</i> , 598 F.2d 995, |
| 4  |   |   | 999 (5th Cir. 1979) (jury may                                      |
| 5  |   |   | find expert testimony "adequately rebutted by the                  |
|    |   |   | observations of mere   |
| 6  |   |   | laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir.       |
| 7  |   |   | 1959); Dusky v. United States,                                     |
| 8  |   |   | 295 F.2d 743 (8th Cir. 1961).<br>The statements do not assume      |
| 9  |   |   | facts not in evidence and do not lack foundation under             |
| 10 |   |   | FED R. EVID. 602 because they are based on                         |
| 11 |   |   | Mr. Nelson's knowledge and experience as described                 |
| 12 |   |   | above. To the extent necessary, the City will make                 |
| 13 |   |   | an offer of proof at trial.  |
| 14 |   |   | The statements in this paragraph do not violate FED.               |
| 15 |   |   | R. EVID. 1002 because they are not secondary evidence              |
| 16 |   |   | being offered to prove the   |
| 17 |   |   | content of a writing. See United States v. Mayans, 17              |
| 18 |   |   | F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial         |
| 19 |   |   | court erred in sustaining best evidence objections to              |
|    |   |   | questions regarding witnesses' understanding of the terms of       |
| 20 |   |   | a written plea agreement).   |
| 21 |   |   | Even if they were, Franklin is in possession of a copy of the      |
| 22 |   |   | Chin Report, which it filed in the Proceeding.                     |
| 23 | 14. The Chin Report makes                                 | Franklin objects to the entirety                          | This paragraph is valid lay  |
| 24 | occasional references to<br>"certain capital              | of this paragraph because it consists of improper opinion | opinion testimony under FED.<br>R. EVID. 701 because it is         |
| 25 | improvements" (see, e.g.,<br>Chin Report at 36, 38) but   | testimony that is not rationally based on Mr. Nelson's    | rationally based on Mr. Nelson's perception,                       |
| 26 | fails to account for the actual scope of improvements and | perception and is not helpful to clearly understand Mr.   | helpful to clearly<br>understanding his testimony                  |
| 27 | maintenance needed at the                                 | Nelson's testimony or to                                  | and helpful to determining at                                      |
| 28 | Courses. Due to the City's overall financial and          | determine a fact in issue. FED. R. EVID. 701; see also    | least one fact in issue. The paragraph is also based on            |

| 1     |  |   |  |
|-------|--|---|--|
| 1   2 | PARAGRAPH OBJECTED<br>TO   | GROUNDS FOR OBJECTION   | RESPONSE TO<br>OBJECTION   |
| 3     | economic condition, as well as the consistent losses                                     | <i>Britz Fertilizers</i> , 2009 U.S. Dist. LEXIS 57947, at *8-9                 | Mr. Nelson's knowledge and   |
|       | experienced by the Courses,  | (fact witness not permitted to  | experience as General Manager of the Courses as                                |
| 4     | the Courses have foregone important capital  | offer opinions to rebut expert's methodology).                                  | well as a golf professional for<br>the past 30 years, who for the              |
| 5     | improvements and deferred<br>maintenance for each of the<br>eight years that I have been | Franklin also objects to this paragraph because Mr. Nelson's description of the | past three years has been employed by KemperSports, Inc. managing the Courses. |
|       | employed in Stockton. While  | Chin Report is not the best   | Cf. Int'l Ass'n of Firefighters,   |
| 7     | this has saved the Courses and the City money in the short                               | evidence of the contents of that document. FED. R.                              | Local 1186 v. City of Vallejo,<br>48 B.R. 208, 292-93 (B.A.P.                  |
| 8     | term, it has resulted in significant degradation of                                      | EVID. 1002.   | 9th Cir. 2009) (upholding the bankruptcy court's admission                     |
| 9     | conditions at the Courses. Poor golfing conditions can                                   |   | of the testimony of the City of Vallejo's Assistant Finance                    |
| 10    | have negative impacts on the<br>number of rounds played and                              |   | Director regarding Vallejo's financial conditions and                          |
| 11    | the price that the Courses can charge, both of which limit                               |   | constraints even though the testimony "arguably contained                      |
| 12    | the revenue the Courses can generate and contribute to the                               |   | legal conclusions" because the testimony pertained to the                      |
| 13    | Courses' lack of profitability.  Without substantial capital                             |   | "complex[]" area of municipal accounting and promoted                          |
| 14    | investment by the City, it is unclear when, if ever, the                                 |   | "judicial efficiency") (citing FRE 701).                                       |
| 15    | Courses could be operated at a profit.   |   | Furthermore, expert testimony  |
| 16    | u projii.  |   | may be rebutted by the testimony of lay witnesses.                             |
| 17    |  |   | United States v. Shackelford,  |
| 18    |  |   | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the                          |
| 19    |  |   | government could rely entirely on lay witnesses with                           |
| 20    |  |   | percipient knowledge to rebut  |
| 21    |  |   | the defendant's expert); United States v. Bennett, 908                         |
| 22    |  |   | F.2d 189, 195 (7th Cir. 1990)<br>(government was not required                  |
| 23    |  |   | to rebut expert testimony with   |
| 24    |  |   | its own expert because "it may accomplish the same result by                   |
| 25    |  |   | presenting lay witnesses and other evidence and by                             |
| 26    |  |   | undermining the defense  |
| 27    |  |   | expert's credibility through cross-examination."); <i>United</i>               |
| 28    |  |   | States v. Mota, 598 F.2d 995, 999 (5th Cir. 1979) (jury may                    |

| 1  | PARAGRAPH OBJECTED   | GROUNDS FOR  | RESPONSE TO  |
|----|--|--|--|
| 2  | ТО   | OBJECTION  | OBJECTION  |
| 3  |  |  | find expert testimony "adequately rebutted by the  |
| 4  |  |  | observations of mere   |
| 5  |  |  | laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir.                                 |
|    |  |  | 1959); Dusky v. United States,   |
| 6  |  |  | 295 F.2d 743 (8th Cir. 1961).  |
| 7  |  |  | The statements in this paragraph do not violate FED.   |
| 8  |  |  | R. EVID. 1002 because they are not secondary evidence  |
| 9  |  |  | being offered to prove the content of a writing. See   |
| 10 |  |  | United States v. Mayans, 17<br>F.3d 1174, 1184-85 (9th Cir.<br>1994) (holding that the trial |
|    |  |  | court erred in sustaining best evidence objections to  |
| 12 |  |  | questions regarding witnesses'   |
| 13 |  |  | understanding of the terms of a written plea agreement).                                     |
| 14 |  |  | Even if they were, Franklin is in possession of a copy of the                                |
| 15 |  |  | Chin Report, which it filed in the Proceeding.   |
| 16 | 15. At a rough estimate,                                   | Franklin objects to the                                      | This paragraph is valid lay  |
| 17 | approximately \$6 million to \$8 million in capital        | underlined portions of this paragraph because they           | opinion testimony under FED. R. EVID. 701 because it is                                      |
| 18 | improvements and deferred maintenance would be             | consist of improper opinion testimony that is not rationally | rationally based on Mr. Nelson's perception,   |
| 19 | required to make the Courses profitable again. Such        | based on Mr. Nelson's  | helpful to clearly<br>understanding his testimony  |
| 20 | improvements and   | perception and is not helpful to clearly understand Mr.      | and helpful to determining at  |
| 21 | maintenance are not mere window dressing. Rather, they     | Nelson's testimony or to determine a fact in issue.          | least one fact in issue. The paragraph is also based on                                      |
|    | represent investments in infrastructure that is critical – | FED. R. EVID. 701.   | Mr. Nelson's knowledge and experience as General   |
| 22 | in fact fundamental – to golf<br>courses, including basic  |  | Manager of the Courses as well as a golf professional for                                    |
| 23 | irrigation, landscaping, cart                              |  | the past 30 years, who for the   |
| 24 | paths, and equipment. Just a few of these items are as     |  | past three years has been employed by KemperSports,  |
| 25 | follows:   |  | Inc. managing the Courses.   |
| 26 | a) The Courses currently have no                           |  |  |
| 27 | cart paths. This is extremely unusual                      |  |  |
| 28 | for golf course,<br>because carts cannot                   |  |  |

| 1 2   | PARAGRAPH OBJECTED<br>TO  | GROUNDS FOR<br>OBJECTION | RESPONSE TO OBJECTION |
|-------|---|--------------------------|-----------------------|
|       | be used for several   |                          |                       |
| 3   4 | days after rain. The result is a loss of cart fees, which make up |                          |                       |
| 5     | 20-21% of daily fees. It would cost                               |                          |                       |
| 6     | approximately \$1 million to add a cart                           |                          |                       |
| 7     | path to each of the Courses.                                      |                          |                       |
| 8     | b) The Courses need new irrigation                                |                          |                       |
| 9     | systems. This will require dredging the lake because the silt     |                          |                       |
| 10    | would otherwise ruin<br>the system's pipes.                       |                          |                       |
|       | Irrigation and dredging for the                                   |                          |                       |
| 12    | Courses could cost upwards of several                             |                          |                       |
| 13    | million dollars.  |                          |                       |
| 14    | c) Both the greens and bunkers at the                             |                          |                       |
| 15    | Courses are of original design and                                |                          |                       |
| 16    | construction. These   |                          |                       |
| 17    | old, "push up" style<br>greens lack proper                        |                          |                       |
| 18    | drainage and soil composition for                                 |                          |                       |
| 19    | optimal turf health.<br>The bunkers'<br>drainage systems          |                          |                       |
| 20    | have completely   |                          |                       |
| 21    | collapsed, preventing proper drainage and sand texture for        |                          |                       |
| 22    | playability.  |                          |                       |
| 23    | Restoring the greens and bunkers at the                           |                          |                       |
| 24    | Courses could cost several million                                |                          |                       |
| 25    | dollars.  |                          |                       |
| 26    | d) Due to the City's financial difficulties, Kemper has been      |                          |                       |
| 27    | unable to lease new equipment for course                          |                          |                       |
| 28    | maintenance. It has   |                          |                       |

| 1  | PARAGRAPH OBJECTED<br>TO   | GROUNDS FOR<br>OBJECTION | RESPONSE TO<br>OBJECTION |
|----|--|--------------------------|--------------------------|
| 2  | instead had to rent  | OBJECTION                | OBJECTION                |
| 3  | substandard  |                          |                          |
| 4  | equipment, which produce substandard                             |                          |                          |
| 5  | results and for which Kemper is responsible for a                |                          |                          |
| 6  | majority of repair   |                          |                          |
| 7  | costs. The cost of replacing course                              |                          |                          |
| 8  | maintenance<br>equipment would be<br>approximately               |                          |                          |
| 9  | \$850,000.   |                          |                          |
| 10 | e) The perimeter fences at the Courses are in                    |                          |                          |
| 11 | desperate need of repair or                                      |                          |                          |
| 12 | replacement, with many holes and                                 |                          |                          |
| 13 | failures allowing for easy access to the                         |                          |                          |
| 14 | Courses and greatly increasing                                   |                          |                          |
| 15 | vandalism. Repairing or replacing the                            |                          |                          |
| 16 | perimeter fences could cost \$75,000                             |                          |                          |
| 17 | to \$100,000 for each of the Courses.                            |                          |                          |
| 18 | f) The Courses' food and beverage                                |                          |                          |
| 19 | facilities need new  |                          |                          |
| 20 | kitchen equipment,<br>including grills,<br>ovens, and fryers, as |                          |                          |
| 21 | well as seating and  |                          |                          |
| 22 | counters. The cost of these improvements                         |                          |                          |
| 23 | could run anywhere from \$50,000 to                              |                          |                          |
| 24 | \$80,000 per café.   |                          |                          |
| 25 |  |                          |                          |
| 26 | ) TI C   |                          |                          |
| 27 | g) The Courses need<br>major landscaping<br>work. There has      |                          |                          |
| 28 | been no annual tree  |                          |                          |

| 1        | PARAGRAPH OBJECTED  | GROUNDS FOR   | RESPONSE TO   |
|----------|---|---|---|
| 2        | ТО  | OBJECTION   | OBJECTION   |
| 3        | maintenance at the Courses since I  |   |   |
| 4        | joined Kemper in August 2011. As a  |   |   |
| 5        | result, there have been numerous tree   |   |   |
| 6        | failures, which create safety concerns and  |   |   |
| 7        | hurt turf growth. An ongoing tree maintenance   |   |   |
| 8        | program would run<br>\$75,000 to \$100,000  |   |   |
| 9        | annually.  h) The parking lots at   |   |   |
| 10       | both Courses are in great need of   |   |   |
| 12       | resurfacing. Each has large pot holes,  |   |   |
| 13       | cracks, and potentially dangerous trip  |   |   |
| 14       | hazards. Kemper has<br>not estimated the  |   |   |
| 15       | costs of resurfacing the parking lots.  |   |   |
| 16       | 16. All of these capital  | Franklin objects to the   | This paragraph is valid lay   |
| 17<br>18 | improvement and deferred<br>maintenance items directly<br>impact the product that makes           | underlined portions of this paragraph because they consist of improper opinion                          | opinion testimony under FED. R. EVID. 701 because it is rationally based on                             |
| 19       | you stand out in a competitive marketplace. As a result, the                                      | testimony that is not rationally based on Mr. Nelson's  | Mr. Nelson's perception, helpful to clearly   |
| 20       | Courses cannot be expected to turn a profit until each of these items is addressed.               | perception and is not helpful<br>to clearly understand Mr.<br>Nelson's testimony or to                  | understanding his testimony<br>and helpful to determining at<br>least one fact in issue. The            |
| 21       | these items is addressed.   | determine a fact in issue.  | paragraph is also based on  |
| 22       |   | FED. R. EVID. 701.  | Mr. Nelson's knowledge and experience as General  |
| 23       |   |   | Manager of the Courses as well as a golf professional for the past 30 years, who for the                |
| 24       |   |   | past three years has been employed by KemperSports,   |
| 25       | 17 P 24 4   | T 11 1 2 2 2 3  | Inc. managing the Courses.  |
| 26<br>27 | 17. Even with these improvements, however, the Chin Report seriously exaggerates the potential to | Franklin objects to the statements in this paragraph because they consist of improper opinion testimony | This paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on |
| 28       | increase revenues at the  | that is not rationally based on   | Mr. Nelson's perception,  |

| 1                                      |   |  |  |
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| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH OBJECTED<br>TO  | GROUNDS FOR<br>OBJECTION   | RESPONSE TO<br>OBJECTION   |
| 3                                      | Courses. The Chin Report projects that by increasing                                    | Mr. Nelson's perception and is not helpful to clearly                                      | helpful to clearly understanding his testimony   |
| 4                                      | rates and making certain improvements (which are not                                    | understand Mr. Nelson's testimony or to determine a  | and helpful to determining at least one fact in issue. The                                     |
| 5                                      | identified), the Courses could achieve total revenues of \$1,955,000. Chin Report, at   | fact in issue. FED. R. EVID. 701; see also Britz Fertilizers, 2009 U.S. Dist. LEXIS 57947, | paragraph is also based on<br>Mr. Nelson's knowledge and<br>experience as General              |
| 6                                      | 39. This is a 14.4% increase  | at *8-9 (fact witness not  | Manager of the Courses as  |
| 7                                      | over the combined revenues<br>for the Courses in fiscal year<br>2012-13. See Toppenberg | permitted to offer opinions to rebut expert's methodology). Furthermore, the statements in | well as a golf professional for<br>the past 30 years, who for the<br>past three years has been |
| 8                                      | Decl., Ex. A. To be blunt, a  | this paragraph are   | employed by KemperSports,  |
| 9                                      | golf course cannot just increase its revenues by more than a tenth without taking       | inadmissible because they assume facts not in evidence and lack foundation. FED. R.        | Inc. managing the Courses.  Cf. Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo,    |
| 10                                     | into consideration all of the   | EVID. 602. Franklin also   | 48 B.R. 208, 292-93 (B.A.P.  |
| 11                                     | factors, investments and expenses outlined above. The latest projections prepared by    | objects to the statements in<br>this paragraph because Mr.<br>Nelson's description of the  | 9th Cir. 2009) (upholding the bankruptcy court's admission of the testimony of the City of     |
| 12                                     | Kemper project an increase of 1.0%, which is itself                                     | Chin Report is not the best evidence of the contents of                                    | Vallejo's Assistant Finance<br>Director regarding Vallejo's                                    |
| 13                                     | considered aggressive. In the   | that document. FED. R. EVID. 1002.   | financial conditions and   |
| 14                                     | current price-driven market, aggravated by the dry winters that the Stockton area has   | EVID. 1002.  | constraints even though the testimony "arguably contained legal conclusions" because the       |
| 15                                     | recently experienced, any substantial increase in                                       |  | testimony pertained to the "complex[]" area of municipal                                       |
| 16  <br>17                             | revenues is unlikely.   |  | accounting and promoted "judicial efficiency") (citing FRE 701).                               |
| 18                                     |   |  | Furthermore, expert testimony  |
| 19                                     |   |  | may be rebutted by the testimony of lay witnesses.   |
| 20                                     |   |  | <i>United States v. Shackelford</i> , 494 F.2d 67, 68, 75 (9th Cir.                            |
| 21                                     |   |  | 1974) (holding that the government could rely  |
| 22                                     |   |  | entirely on lay witnesses with   |
| 23                                     |   |  | percipient knowledge to rebut the defendant's expert);   |
| 24                                     |   |  | <i>United States v. Bennett</i> , 908 F.2d 189, 195 (7th Cir. 1990)                            |
| 25                                     |   |  | (government was not required   |
| 26                                     |   |  | to rebut expert testimony with its own expert because "it may                                  |
|  |   |  | accomplish the same result by  |
| 27                                     |   |  | presenting lay witnesses and other evidence and by   |
| 28                                     |   |  | undermining the defense  |

| 1  | DADACDABII OD IECTED  | CDOUNDS FOR   | DECDONCE TO   |
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| 2  | PARAGRAPH OBJECTED<br>TO  | GROUNDS FOR<br>OBJECTION                                    | RESPONSE TO<br>OBJECTION  |
| 3  |   |   | expert's credibility through cross-examination."); <i>United</i>                      |
| 4  |   |   | States v. Mota, 598 F.2d 995,   |
| 5  |   |   | 999 (5th Cir. 1979) (jury may find expert testimony                                   |
| 6  |   |   | "adequately rebutted by the observations of mere                                      |
| 7  |   |   | laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir.                          |
| 8  |   |   | 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961).                  |
| 9  |   |   | The statements do not assume  |
| 10 |   |   | facts not in evidence and do<br>not lack foundation under<br>FED R. EVID. 602 because |
| 11 |   |   | they are based on Mr. Nelson's knowledge and  |
| 12 |   |   | experience as described above. To the extent  |
| 13 |   |   | necessary, the City will make   |
| 14 |   |   | an offer of proof at trial.  The statements in this                                   |
| 15 |   |   | paragraph do not violate FED.<br>R. EVID. 1002 because they                           |
| 16 |   |   | are not secondary evidence being offered to prove the                                 |
| 17 |   |   | content of a writing. See United States v. Mayans, 17                                 |
| 18 |   |   | F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial                            |
| 19 |   |   | court erred in sustaining best evidence objections to                                 |
| 20 |   |   | questions regarding witnesses' understanding of the terms of                          |
| 21 |   |   | a written plea agreement).<br>Even if they were, Franklin is                          |
| 22 |   |   | in possession of a copy of the Chin Report, which it filed in                         |
| 23 |   |   | the Proceeding.   |
| 24 | 18. Yet another flaw of the Chin Report is its purported          | Franklin objects to the statements in this paragraph        | The statements in this paragraph are valid lay  |
| 25 | comparison of the rates at the<br>Courses with the rates of local | because they consist of improper opinion testimony          | opinion testimony under FED.<br>R. EVID. 701 because they                             |
| 26 | competitors. Chin Report, at 38. The rates listed in the          | that is not rationally based on Mr. Nelson's perception and | are rationally based on Mr. Nelson's perception,                                      |
| 27 | Chin report are special discounted rates offered at the           | is not helpful to clearly<br>understand Mr. Nelson's        | helpful to clearly<br>understanding his testimony                                     |
| 28 | Courses during off-peak   | testimony or to determine a                                 | and helpful to determining at   |

| 1  | DADAGDADU OD HEGTED   | CD OVAND C FIOD   | DEGRONGE TO   |
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| 2  | PARAGRAPH OBJECTED<br>TO                                      | GROUNDS FOR<br>OBJECTION  | RESPONSE TO<br>OBJECTION  |
| 3  | seasons, while the rates listed for local competitors are the | fact in issue. FED. R. EVID.  | least one fact in issue. The  |
| 4  | competitors' full-price rack rates. The resulting             | 701; see also Britz Fertilizers,<br>2009 U.S. Dist. LEXIS 57947,<br>at *8-9 (fact witness not | statements are also based on Mr. Nelson's knowledge and experience as General |
| 5  | comparison is essentially one of apples (the Courses'         | permitted to offer opinions to rebut expert's methodology).                                   | Manager of the Courses as well as a golf professional for                     |
| 6  | special rates) to oranges (competitors' rack rates).          | Franklin objects to the statements in this paragraph  | the past 30 years, who for the past three years has been                      |
|    | Such a comparison is  | because Mr. Nelson's  | employed by KemperSports,   |
| 7  | improper and inaccurate.                                      | description of the Chin Report is not the best evidence of the                                | Inc. managing the Courses. <i>Cf. Int'l Ass'n of Firefighters,</i>            |
| 8  |   | contents of that document. FED. R. EVID. 1002.  | Local 1186 v. City of Vallejo,<br>48 B.R. 208, 292-93 (B.A.P.                 |
| 9  |   |   | 9th Cir. 2009) (upholding the bankruptcy court's admission                    |
| 10 |   |   | of the testimony of the City of Vallejo's Assistant Finance                   |
| 11 |   |   | Director regarding Vallejo's financial conditions and                         |
| 12 |   |   | constraints even though the testimony "arguably contained                     |
| 13 |   |   | legal conclusions" because the testimony pertained to the                     |
| 14 |   |   | "complex[]" area of municipal accounting and promoted                         |
| 15 |   |   | "judicial efficiency") (citing FRE 701).                                      |
| 16 |   |   | Furthermore, expert testimony   |
| 17 |   |   | may be rebutted by the testimony of lay witnesses.                            |
| 18 |   |   | United States v. Shackelford,   |
| 19 |   |   | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the                         |
| 20 |   |   | government could rely   |
| 21 |   |   | entirely on lay witnesses with percipient knowledge to rebut                  |
| 22 |   |   | the defendant's expert);  United States v. Bennett, 908                       |
| 23 |   |   | F.2d 189, 195 (7th Cir. 1990)   |
| 24 |   |   | (government was not required to rebut expert testimony with                   |
|    |   |   | its own expert because "it may  |
| 25 |   |   | accomplish the same result by presenting lay witnesses and                    |
| 26 |   |   | other evidence and by   |
| 27 |   |   | undermining the defense expert's credibility through                          |
| 28 |   |   | cross-examination."); United  |

| 1  |  | CD OVING TOD  | DESPONSE ES  |
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| 2  | PARAGRAPH OBJECTED<br>TO                                       | GROUNDS FOR<br>OBJECTION                                      | RESPONSE TO<br>OBJECTION   |
| 3  |  |   | States v. Mota, 598 F.2d 995,  |
|    |  |   | 999 (5th Cir. 1979) (jury may find expert testimony                  |
| 4  |  |   | "adequately rebutted by the  |
| 5  |  |   | observations of mere laymen"); Carpenter v. United                   |
| 6  |  |   | States, 264 F.2d 565 (4th Cir.                                       |
| 7  |  |   | 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961). |
| 8  |  |   | The statements in this   |
| 9  |  |   | paragraph do not violate FED.<br>R. EVID. 1002 because they          |
|    |  |   | are not secondary evidence   |
| 10 |  |   | being offered to prove the content of a writing. See                 |
| 11 |  |   | <i>United States v. Mayans</i> , 17 F.3d 1174, 1184-85 (9th Cir.     |
| 12 |  |   | 1994) (holding that the trial court erred in sustaining best         |
| 13 |  |   | evidence objections to   |
| 14 |  |   | questions regarding witnesses' understanding of the terms of         |
| 15 |  |   | a written plea agreement).<br>Even if they were, Franklin is         |
|    |  |   | in possession of a copy of the                                       |
| 16 |  |   | Chin Report, which it filed in the Proceeding.                       |
| 17 | 19. While the Chin Report                                      | Franklin objects to the                                       | The statements in this   |
| 18 | pays lip service to the  | statements in this paragraph                                  | paragraph are valid lay  |
| 19 | financial and physical condition of the Courses, it            | because they consist of improper opinion testimony            | opinion testimony under FED. R. EVID. 701 because they               |
| 20 | essentially ignores these factors in developing its            | that is not rationally based on Mr. Nelson's perception and   | are rationally based on Mr. Nelson's perception,                     |
|    | valuation. In particular, the                                  | is not helpful to clearly                                     | helpful to clearly   |
| 21 | Chin Report fails to account for the following critical facts: | understand Mr. Nelson's testimony or to determine a           | understanding his testimony and helpful to determining at            |
| 22 | a) The Courses have  | fact in issue. FED. R. EVID. 701; see also Britz Fertilizers, | least one fact in issue. The statements are also based on            |
| 23 | lost money every year for nearly a                             | 2009 U.S. Dist. LEXIS 57947,                                  | Mr. Nelson's knowledge and   |
| 24 | decade.  | at *8-9 (fact witness not permitted to offer opinions to      | experience as General Manager of the Courses as                      |
| 25 | b) The Courses cannot suddenly become                          | rebut expert's methodology). Franklin objects to the          | well as a golf professional for<br>the past 30 years, who for the    |
|    | profitable by simply   | statements in this paragraph                                  | past three years has been  |
| 26 | raising prices.  | because Mr. Nelson's description of the Chin Report           | employed by KemperSports, Inc. managing the Courses.                 |
| 27 | c) In order to even potentially return to                      | is not the best evidence of the contents of that document.    | Cf. Int'l Ass'n of Firefighters,<br>Local 1186 v. City of Vallejo,   |
| 28 | positive margins, the  | contonts of that document.                                    | 48 B.R. 208, 292-93 (B.A.P.  |

| .     |  |                          |   |
|-------|--|--------------------------|---|
| 1   2 | PARAGRAPH OBJECTED<br>TO                         | GROUNDS FOR<br>OBJECTION | RESPONSE TO<br>OBJECTION  |
|       | Courses will first                               | FED. R. EVID. 1002.      | 9th Cir. 2009) (upholding the   |
| 3     | require anywhere from \$6 million to             |                          | bankruptcy court's admission of the testimony of the City of                      |
| 5     | \$8 million in capital improvements and deferred |                          | Vallejo's Assistant Finance Director regarding Vallejo's financial conditions and |
| 6     | maintenance. d) Even with such                   |                          | constraints even though the testimony "arguably contained                         |
| 7     | improvements and maintenance, the                |                          | legal conclusions" because the testimony pertained to the                         |
| 8     | Courses can expect only modest revenue           |                          | "complex[]" area of municipal accounting and promoted                             |
| 9     | increases (and probably not the                  |                          | "judicial efficiency") (citing FRE 701).  |
| 10    | more than 10% increase that Chin                 |                          | Furthermore, expert testimony may be rebutted by the                              |
| 11    | claims)  |                          | testimony of lay witnesses.   |
| 12    |  |                          | United States v. Shackelford, 494 F.2d 67, 68, 75 (9th Cir.                       |
| 13    |  |                          | 1974) (holding that the government could rely                                     |
| 14    |  |                          | entirely on lay witnesses with  |
| 15    |  |                          | percipient knowledge to rebut the defendant's expert);                            |
| 16    |  |                          | <i>United States v. Bennett</i> , 908<br>F.2d 189, 195 (7th Cir. 1990)            |
| 17    |  |                          | (government was not required to rebut expert testimony with                       |
| 18    |  |                          | its own expert because "it may accomplish the same result by                      |
| 19    |  |                          | presenting lay witnesses and  |
| 20    |  |                          | other evidence and by undermining the defense                                     |
| 21    |  |                          | expert's credibility through cross-examination."); <i>United</i>                  |
| 22    |  |                          | States v. Mota, 598 F.2d 995,   |
| 23    |  |                          | 999 (5th Cir. 1979) (jury may find expert testimony                               |
| 24    |  |                          | "adequately rebutted by the observations of mere                                  |
| 25    |  |                          | laymen"); Carpenter v. United   |
| 26    |  |                          | States, 264 F.2d 565 (4th Cir. 1959); Dusky v. United States,                     |
| 27    |  |                          | 295 F.2d 743 (8th Cir. 1961). The statements in this                              |
| 28    |  |                          | paragraph do not violate FED.   |

| 1 2 | PARAGRAPH OBJECTED<br>TO                                    | GROUNDS FOR<br>OBJECTION                                      | RESPONSE TO OBJECTION  |
|-----|---|---|--|
|     |   |   | R. EVID. 1002 because they   |
| 3   |   |   | are not secondary evidence<br>being offered to prove the                                     |
| 5   |   |   | content of a writing. See<br>United States v. Mayans, 17<br>F.3d 1174, 1184-85 (9th Cir.     |
| 6   |   |   | 1994) (holding that the trial court erred in sustaining best                                 |
| 7   |   |   | evidence objections to questions regarding witnesses'  |
| 8   |   |   | understanding of the terms of a written plea agreement).                                     |
| 9   |   |   | Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in |
| 10  |   |   | the Proceeding.  |
| 11  | 20. Based on the Chin Report's refusal to properly          | Franklin objects to the statements in this paragraph          | The statements in this paragraph are valid lay   |
| 12  | account for these   | because they consist of                                       | opinion testimony under FED.   |
| 13  | considerations into its valuation, the report vastly        | improper opinion testimony that is not rationally based on    | R. EVID. 701 because they are rationally based on  |
| 14  | overestimates the value of the Courses. Any reasonable      | Mr. Nelson's perception and is not helpful to clearly         | Mr. Nelson's perception, helpful to clearly  |
| 15  | valuation would need to consider the price that a           | understand Mr. Nelson's testimony or to determine a           | understanding his testimony and helpful to determining at                                    |
| 16  | purchaser would pay for golf courses that have perennially  | fact in issue. FED. R. EVID. 701; see also Britz Fertilizers, | least one fact in issue. The statements are also based on                                    |
| 17  | operated at a deficit, would require millions of dollars of | 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not        | Mr. Nelson's knowledge and experience as General   |
| 18  | investments to become profitable, and would only be         | permitted to offer opinions to rebut expert's methodology).   | Manager of the Courses as well as a golf professional for                                    |
| 19  | able to expect limited to moderate profits years down       | Franklin also objects to the statements in this paragraph     | the past 30 years, who for the past three years has been                                     |
| 20  | the road. By choosing to ignore these factors, I believe    | because Mr. Nelson's description of the Chin Report           | employed by KemperSports, Inc. managing the Courses.   |
| 21  | the Chin Report's conclusions are fatally flawed.           | is not the best evidence of the contents of that document.    | Cf. Int'l Ass'n of Firefighters,<br>Local 1186 v. City of Vallejo,                           |
| 22  | are running fluwers.  | FED. R. EVID. 1002.   | 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the                                    |
| 23  |   |   | bankruptcy court's admission   |
|     |   |   | of the testimony of the City of<br>Vallejo's Assistant Finance                               |
| 24  |   |   | Director regarding Vallejo's financial conditions and  |
| 25  |   |   | constraints even though the testimony "arguably contained                                    |
| 26  |   |   | legal conclusions" because the   |
| 27  |   |   | testimony pertained to the "complex[]" area of municipal                                     |
| 28  |   |   | accounting and promoted "judicial efficiency") (citing                                       |

| 1  | PARAGRAPH OBJECTED<br>TO | GROUNDS FOR<br>OBJECTION | RESPONSE TO OBJECTION   |
|----|--------------------------|--------------------------|---|
| 2  | 10                       | Obdestion                | FRE 701).   |
| 3  |                          |                          | Furthermore, expert testimony may be rebutted by the              |
| 5  |                          |                          | testimony of lay witnesses. <i>United States v. Shackelford</i> , |
| 6  |                          |                          | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the             |
| 7  |                          |                          | government could rely<br>entirely on lay witnesses with           |
| 8  |                          |                          | percipient knowledge to rebut                                     |
| 9  |                          |                          | the defendant's expert); United States v. Bennett, 908            |
| 10 |                          |                          | F.2d 189, 195 (7th Cir. 1990)<br>(government was not required     |
| 11 |                          |                          | to rebut expert testimony with                                    |
| 12 |                          |                          | its own expert because "it may accomplish the same result by      |
|    |                          |                          | presenting lay witnesses and                                      |
| 13 |                          |                          | other evidence and by   |
| 14 |                          |                          | undermining the defense   |
| 15 |                          |                          | expert's credibility through cross-examination."); <i>United</i>  |
|    |                          |                          | States v. Mota, 598 F.2d 995,                                     |
| 16 |                          |                          | 999 (5th Cir. 1979) (jury may                                     |
| 17 |                          |                          | find expert testimony "adequately rebutted by the                 |
| 18 |                          |                          | observations of mere  |
|    |                          |                          | laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir.      |
| 19 |                          |                          | 1959); Dusky v. United States,                                    |
| 20 |                          |                          | 295 F.2d 743 (8th Cir. 1961).                                     |
| 21 |                          |                          | The statements in this paragraph do not violate FED.              |
| 22 |                          |                          | R. EVID. 1002 because they are not secondary evidence             |
| 23 |                          |                          | being offered to prove the content of a writing. See              |
| 24 |                          |                          | United States v. Mayans, 17                                       |
|    |                          |                          | F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial        |
| 25 |                          |                          | court erred in sustaining best                                    |
| 26 |                          |                          | evidence objections to questions regarding witnesses'             |
| 27 |                          |                          | understanding of the terms of                                     |
| 28 |                          |                          | a written plea agreement).<br>Even if they were, Franklin is      |

| 1 2 | PARAGRAPH OBJECTED<br>TO | GROUNDS FOR<br>OBJECTION            | RESPONSE TO OBJECTION   |  |  |
|-----|--------------------------|-------------------------------------|---|--|--|
| 3   |                          |                                     | in possession of a copy of the Chin Report, which it filed in the Proceeding. |  |  |
| 4   |                          |                                     | the Proceeding.   |  |  |
| 5   | Dated: May 6, 2014       | MARC A. LEV                         | INSON   |  |  |
| 6   |                          | NORMAN C. HILE<br>PATRICK B. BOCASH |   |  |  |
| 7   |                          | Orrick, Herringt                    | Orrick, Herrington & Sutcliffe LLP  |  |  |
| 8   |                          |                                     |   |  |  |
| 9   |                          | ${}$ P.                             | /s/ Patrick B. Bocash<br>ATRICK B. BOCASH                                     |  |  |
| 10  |                          |                                     | Attorneys for Debtor City of Stockton   |  |  |
| 11  |                          |                                     | ,   |  |  |
| 12  |                          |                                     |   |  |  |
| 13  |                          |                                     |   |  |  |
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| 24  |                          |                                     |   |  |  |
| 25  |                          |                                     |   |  |  |
| 26  |                          |                                     |   |  |  |
| 27  |                          |                                     |   |  |  |
| 28  |                          |                                     |   |  |  |